

APPENDIX D

COMPENSATION GUIDELINES FOR PROFESSIONALS IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MARYLAND

The following guidelines apply to professional fee applications in all bankruptcy cases in the United States Bankruptcy Court for the District of Maryland. These guidelines shall apply to all professionals seeking compensation pursuant to 11 U.S.C. §§327, 328, 330 and 331, including attorneys, accountants, examiners, investment bankers and real estate advisors, unless the court, in the order employing such professional or other order, provides otherwise. These guidelines set forth information to be contained in both interim and final applications for the approval of fees and expenses.

Although conformity to these guidelines will ensure that certain necessary information is included to assist the court in its review of professional fee applications, it must be remembered that the following are guidelines only. Applications for compensation may vary from case to case, and each application must be reviewed on its own merits depending upon the facts and circumstances of the case. Familiarity with and adherence to the following guidelines will, it is hoped, promote the submission of more uniform professional fee applications containing adequate information, and facilitate a meaningful review process and more expeditious action by the court.

A. Format of Fee Applications.

Bankruptcy Rule 2016(a) sets forth certain requirements with respect to professional fee applications. The application should set forth a detailed statement of (1) the services rendered, (2) the time expended, (3) the expenses incurred, (4) the amounts requested, (5) the rates charged for such services, (6) how the services rendered were necessary to the administration of, or beneficial at the

time at which the services were rendered toward the completion of, the case, (7) information relevant to a determination that the services were performed within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue or task addressed, and (8) an affirmation that the compensation requested is reasonable based upon the customary compensation and reimbursement of expenses charged by the applicant and comparably skilled professionals in nonbankruptcy matters. In addition, applications should include a statement as to what payments have been made or promised to the applicant, the source of the compensation paid or promised, whether there is any sharing arrangement and the particulars as to any such sharing arrangement. Applications should also set forth the date the order approving employment was entered and the dates of entry of any previous orders approving interim compensation to the applicant and the amounts of compensation previously approved. Finally, fee applications should include a "lodestar" analysis and discussion of the factors identified in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), and adopted by the Fourth Circuit in Barber v. Kimbrell's, Inc., 577 F.2d 216 (4th Cir. 1978), Anderson v. Booth, 658 F.2d 246 (4th Cir. 1978) and Harman v. Levin, 772 F.2d 1150 (4th Cir. 1985).

B. Description of Services Rendered and Time Expended.

Daily time sheets or a listing of daily time entries, in legible form, should be included in or attached to the application.^{1/} The time sheets or time entries should provide an itemized listing of all services performed by each professional and paraprofessional and the time spent on each matter indicated. The

^{1/} Fee applications for matters handled on a contingent fee basis and applications required to be submitted pursuant to §506(b) should also conform to the applicable format guidelines set forth herein.

applicable billing rate for each professional and paraprofessional should be indicated.

Each professional and paraprofessional should record time in increments of tenths of an hour and keep contemporaneous time records. Time records should set forth in reasonable detail an appropriate narrative description of the services rendered. As a general rule, the description should include indications of the participants in and the length and nature of the activities undertaken. Examples of insufficient descriptions include "telephone call," "telephone call to X," "conference with client," "research," "review of documents," "review of pleadings," and "correspondence." Examples of satisfactory descriptions are set forth in footnote 3.

The broad "lumping" of services, or the grouping of different tasks within one block of time, should generally be avoided in favor of more specific descriptions.^{2/} In recording time for each day, each professional and paraprofessional may describe in one entry the nature of the services rendered on a given task during that day and the aggregate time expended that day on such task, provided, however, that if the professional or paraprofessional works more than one hour on a task on any given day, the time record for that day should include internally, within the description of services for that day, the amount of time spent on each particular activity. A hypothetical time record complying with the foregoing is included below.^{3/}

^{2/} Notwithstanding the general prohibition of "lumping", time entries for periods of one hour or less on a given day may be grouped together provided that a reasonable description of the services rendered within such time entry is provided.

^{3/} A complying time entry would be:

"internal conference with X re cash collateral (.3); revise draft motion re cash collateral (.8); conf. call with Y and Z re cash collateral hearing (.5); review documents re cash collateral motion (1.1); legal research re cash collateral hearing (.5) ... Total Time 3.2"

The description of services required to be set forth is not intended to require the disclosure of privileged or confidential information, provided, that if additional detail is required, the court may direct that such additional information be furnished subject to appropriate protective conditions. Information set forth in a fee application shall not operate as a waiver of any applicable privilege, including the attorney/client privilege or work product doctrine.

Charges for conferences between individuals in the same firm on the same case are not objectionable, if reasonable, necessary and limited. Similarly, more than one professional may charge for attending a meeting or hearing on behalf of the same client if such attendance is reasonable, necessary and limited. An explanation as to why more than one professional attended such meeting or hearing may in certain circumstances be required, particularly if such multiple professional attendance does not appear to be reasonable in a particular situation.^{4/}

Ordinarily, time entries should be organized by tasks and presented chronologically. An applicant should either organize the time sheets or present a time entry listing by discrete tasks where an application covers multiple tasks undertaken by the applicant during the time period covered by the application. Within each task identified, the time entries of all timekeepers working on such task should appear chronologically. In addition, the application should include a summary by timekeeper of the time spent on each task, the billing value for each timekeeper and a total billing amount for each task. Finally, the application should also include a brief narrative description as to why each task was undertaken, the current status thereof and the results or benefits achieved to date.

^{4/} In appropriate cases where there are multiple counsel from different firms representing the same party, such counsel may be required to submit their applications simultaneously.

It is not the intent of these guidelines to set forth a definitive listing of what tasks should be separately identified in each case or each professional fee application. However, where a discrete activity can reasonably be expected to continue over a period of at least three months and can reasonably be expected to constitute 10-20% or more of the fees to be sought for an interim period, the professional should present a separate chronological listing of time entries for such matter to the extent reasonably practicable. Examples of categories which might comprise separate tasks in a particular case are set forth below.^{5/}

Subject to court approval, a trustee may employ himself or herself, or a firm with which the trustee is affiliated, as a professional. In such cases, applications for compensation should distinguish services rendered as trustee from those rendered by the professional seeking compensation.

Compensation sought for time spent traveling should indicate the mode and time of travel, the necessity for travel and whether any substantive work

^{5/} Sample Task Listing for Attorneys

Asset analysis and recovery.
Asset disposition/sales/leases/executory contracts.
Business operations.
Case administration.
Claims administration and objections.
Fee/employment applications and objections.
Financing/cash collateral.
Litigation [separately identify larger litigation matters
as discrete tasks].
Meetings of creditors.
Plan and disclosure statement.

Sample Task Listing for Accountants

Accounting/auditing.
Business analysis.
Corporate finance.
Data analysis.
Litigation consulting.
Tax issues.

Valuation/projections.

was performed while traveling (e.g., preparing for hearing). If excessive or unreasonable, compensation for travel time may be reduced. If time is spent during travel working on other matters, such travel time should not also be billed to the bankruptcy case.

Compensation for time spent preparing and defending fee applications is appropriate if reasonable. Compensation for the preparation of fee applications will be based on the level and skill reasonably required to prepare the application.

C. Reimbursement for Disbursements and Expenses.

Disbursements and expenses for which reimbursement is sought should be summarized in the fee application by category and any unusual items explained. Excessive charges will not be reimbursed. The following are guidelines with respect to some (but not necessarily all) of the categories of reimburseable disbursements and expenses:

Photocopying. The applicable charge for photocopying should be the actual cost of such copying not to exceed 20¢ per page or, if an outside service is used, the actual cost of such copying.

Facsimile Transmission. Charges for out-going facsimile transmissions to long-distance telephone numbers are reimburseable at the lower of (i) toll charges or (ii) if such amount is not readily determinable, \$1.25 per page for domestic and \$2.50 per page for international transmissions. Charges for in-coming facsimile transmissions are not reimburseable.

Mileage. The applicable charge for automobile mileage should not exceed the government approved rate, plus actual parking charges incurred.

Travel. The actual expenses incurred for out-of-town travel are reimburseable. However, first-class airfare, luxury accommodations and deluxe meals are not reimburseable, nor are personal or incidental charges unless necessary as a result of unforeseen circumstances.

Computerized Legal Research. Reasonable expenses may be charged for computerized legal research, including Lexis and Westlaw, provided that there is a description of the legal research undertaken and the charges do not exceed the actual cost to the attorney.

Postage, Telephone, Courier and Freight. The cost of postage, freight, overnight delivery, courier services and telephone toll charges may be reimbursable, if reasonably incurred. Only the long distance component of cellular telephone charges is reimbursible. Charges for services such as messengers and overnight mail should not be incurred indiscriminately. Charges for local telephone services are not reimbursable. If normal, routine first-class postage is not customarily charged to other clients, then such postage would not be reimbursable; however, special postage charges or bulk mailings would ordinarily be reimbursable.

Court Costs. Court costs and disbursements are reimbursable.

Meals. Charges for meals are generally not reimbursable unless justified under appropriate circumstances or unless incurred as part of otherwise reimbursable out-of-town travel.

Overtime Charges. Overtime for non-professional and paraprofessional staff is reimbursable only if specifically justified in the application as necessary under the circumstances. Overtime charges for professional staff is not reimbursable.

Word Processing, Proofreading, Secretarial and Other Staff Services. Daytime, ordinary business hour charges for word processing, proofreading, secretarial, library and other staff services (exclusive of paraprofessional services) are generally considered office overhead items and, therefore, not reimbursable unless specifically justified in exceptional circumstances.

With respect to all disbursements and expenses for which reimbursement is sought, it must be understood that they must be of a kind and at a rate customarily charged to and collected from other clients and subject to the test of reasonableness under the circumstances of each case.

Each professional fee application in which the applicant is seeking reimbursement for expenses should include a statement that, with respect to expenses for which reimbursement is sought, the applicant is familiar with and has submitted the application in conformity with the "Compensation Guidelines for Professionals in the United States Bankruptcy Court for the District of Maryland."

D. Lodestar Analysis, Johnson Factors And Billing Judgment.

Each professional fee application should contain a "lodestar" analysis and discussion of the Johnson v. Georgia Highway Express, Inc. (supra) factors, as adopted by the Fourth Circuit in Barber v. Kimbrell's, Inc. (supra), including a statement as to the professional's application of billing judgment to the compensation sought by such professional.

The "lodestar" analysis should include a summary listing the name of each professional and paraprofessional for whom compensation is sought, the number of hours worked by each identified individual, that individual's hourly rate (which should not exceed such individual's standard hourly rate in other bankruptcy and non-bankruptcy matters), the total compensation sought for each such individual and a total of all compensation sought for the period in question, before and after applying billing judgment to the compensation requested. A similar detailed summary of disbursements and expenses by category should also be presented.

The fee application should discuss the application of the twelve Johnson v. Georgia Highway Express, Inc. factors, to the extent that they apply in each particular case. Those factors may be summarized as follows:

1. the time and labor expended;
2. the novelty and difficulty of the questions raised;
3. the skill required to properly perform the professional services rendered;
4. the professional's opportunity costs in pursuing the matter;
5. the customary fee for like work;
6. the professional's expectations as to compensation at the outset of the matter;
7. the time limitations imposed by the client or circumstances;
8. the amount in controversy and the results obtained;
9. the experience, reputation and ability of the professional;
10. the desirability or undesirability of the case within the professional community in which the case arose;
11. the nature and length of the professional relationship between the professional and client; and
12. professional fee awards in similar cases.

Not all of the foregoing twelve factors will be applicable to every fee application. However, they should be considered in the professional's exercise of billing judgment and discussed in the fee application. If a particular factor is not considered to be applicable, the application should so state. In addition, if the professional believes that other factors are relevant to the compensation requested, the foregoing list is not intended to be exhaustive. Professionals are encouraged to state all facts and circumstances that such professional believes to be relevant to the compensation requested.

In the final analysis, in making its determination with respect to a fee application and the amount of compensation to be awarded, the court will consider the nature, the extent, and the value of the services rendered.